



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



STEVEN E. CHESTER
DIRECTOR

October 19, 2009

1. Bill Number and Sponsor:

Senate Bills 674-679
Senator Barcia, et al
Referred to Committee on Economic Development and Regulatory Reform

2. Purpose:

The original Act provides for the incorporation of municipal authorities to acquire, own, extend, improve and operate sewage disposal, water supply and solid waste management systems; to prescribe the rights, powers and duties thereof; to authorize contracts between such authorities and public corporations; to provide for the issuance of bonds to acquire, construct, extend or improve the systems; and, to prescribe penalties and provide remedies.

The six bills collectively propose to amend the Act to allow municipal authorities to enter into a contract with either its constituent members or an Indian tribe for waste and water-related services. These could include, for example, the sale of excess water supply or wastewater treatment capacity from the municipality to the tribe, or visa versa.

3. How This Legislation Impacts Current Programs in the Department:

The Department of Environmental Quality (DEQ) generally has jurisdiction to regulate municipal service in Michigan. These services include the supply of drinking water, wastewater treatment and disposal, and solid waste disposal. An exception to this general rule applies to "Indian Country." The U.S. Environmental Protection Agency (U.S. EPA) has jurisdiction over Indian Nations under the Safe Drinking Water Act, the Clean Water Act, and the Solid Waste Disposal Act, as amended, and asserts that the State has no jurisdiction over tribal drinking water, wastewater and solid waste facilities located within "Indian Country" – essentially, the tribe's reservation.

This set of bills could impact the DEQ because contracted services provided by a tribe to a municipality could potentially shift future drinking water, wastewater and solid waste services out of state control and into federal control. This would occur if those services contracted by either an authority or municipality with a tribe involve facilities located on tribal lands (i.e., within a reservation). Services provided by a municipality to a tribe will not be impacted.

A potentially complicating issue is the fact that in at least some areas, the size and boundaries of tribal reservations may be uncertain or subject to legal dispute. A facility that is in a disputed reservation area may pose difficult jurisdictional problems between tribes and, state and federal environmental agencies.

4. Introduced at Agency Request:

No.

5. Agency Support:

Neutral.

6. Justification for the Department's Position:

These bills could allow the effective allocation of municipal services between Indian tribes and municipalities. There is a potential impact to the DEQ's ability to enforce environmental regulations depending on a "system's" location on or off a tribal reservation. Nothing in these proposed bills, however, prevents the DEQ from developing a cooperative agreement/relationship with the tribes to jointly manage oversight of the common good (such as a water resource) regardless of the location of the facility in question.

7. State Revenue/Budgetary Implications:

N/A.

8. Implications to Local Units of Government:

Local units of government, as partners in a municipal authority, can be taxed by tribal units.

9. Administrative Rules Implications:

The DEQ will not have jurisdiction of waste management, drinking water or wastewater facilities on Indian reservations.

10. Other Pertinent Information:

The Legislature may wish to consider re-writing Section 3 of Senate Bill 679 because it purports to require an Indian tribe to discontinue or restore services as specified under an earlier subsection. As a matter of federal law, the state Legislature most likely lacks the authority to directly impose such a legal requirement on an Indian tribe for operations within its reservation, likely making this provision unenforceable. An alternative approach would be to require a municipality that enters into a contract with a tribe to include, as part of any such contract, a provision requiring the tribe to comply with this requirement. The effect of this approach would be to apply the requirement through a contractual agreement which the tribe has entered voluntarily. Similarly, the Legislature could consider requiring that those municipalities and authorities contracting with tribal government for municipal services include a contract provision specifying that the tribe agree to follow state environmental laws and standards.

A handwritten signature in black ink, appearing to read "S. E. Chester", is positioned above the printed name and title.

Steven E. Chester, Director
Department of Environmental Quality

EXE

